

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 15161 of 2004****For Approval and Signature:****HONOURABLE MR. JUSTICE A.M.KAPADIA**

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Whether Reporters of Local
1 Papers may be allowed to see the
judgment ?

2 To be referred to the Reporter
or not ?

Whether their Lordships wish to
3 see the fair copy of the
judgment ?

Whether this case involves a
substantial question of law as
4 to the interpretation of the
constitution of India, 1950 or
any order made thereunder ?

5 Whether it is to be circulated
to the civil judge ?

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MAHAVIR CASTINGS PVT. LTD. - Petitioner(s)**Versus****PURSHOTTAMBHAI P.MISTRI - Respondent(s)**

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Appearance :

MR DV PARIKH for Petitioner(s) : 1,
MR. SK JHAVERI for Ms. Jirga D. Jhaveri for
Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 21/08/2006

ORAL JUDGMENT

1. By instant petition filed under Article 226/227 of the Constitution of India, the petitioner challenges the order dated 30.8.2004 recorded by the learned Judge, City Civil Court No.17, Ahmedabad, below application Ex.15, Summons for judgment, taken out in Summary Suit No.3418 of 1991, by which Ex.15, Summons for Judgment, taken out by the plaintiff/respondent has been allowed with a direction to the petitioner/defendant to deposit a sum of Rs.3,43,882/- along with interest amount on the principal sum of Rs.2,25,251/- @18% per annum from the date of the summons for judgment till recovery.

2. The respondent has filed Summary Suit No.

3418 of 1991 before the City Civil Court, Ahmedabad with regard to certain activity of building, factory shed and compound wall for the petitioner for the year 1987-88, as averred in the plaint. It is alleged that the petitioner/defendant paid to the respondent/plaintiff a sum of Rs.1,30,000/- towards advance. It is further alleged that in all a sum of Rs.3,55,151/- was owing to the respondent/plaintiff from the petitioner/defendant and, therefore, after deducting Rs.1,30,000/- towards the advance payment, there would be an outstanding amount of Rs.2,25,151/- towards the principal amount payable from the petitioner/defendant to respondent/plaintiff and adding interest @ 18% the total outstanding amount payable by the petitioner to the respondent was Rs.3,43,882/- and, therefore, the respondent/plaintiff has filed Summary Suit No.3418 of 1991 for recovery of a sum of Rs.3,43,882/- and

interest @ 18% on the principal amount of Rs.2,25,151/-

3. The petitioner had filed appearance and applied for leave to defend the suit. The learned Judge of the City Civil Court, Ahmedabad, after hearing the parties, passed order dated 30.8.2004, giving rise to present petition.

4. At the time of hearing of this petition, Mr. D.V. Parikh, learned advocate of the petitioner and Mr. S.K. Jhaveri, learned advocate for Ms. Jirga D. Jhaveri, learned advocate of the respondent, have jointly requested that the matter may be remanded to the City Civil Court, Ahmedabad for deciding the application Ex.15, Summons for Judgement, afresh instead of deciding this petition on merits by this Court.

5. In view of the aforesaid joint request made by the learned advocates appearing for the parties, the impugned order deserves to be quashed and set aside by allowing this petition and thereby remanding the matter for deciding the application Ex.15, Summons for judgment, de-novo after hearing both the parties.

6. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned impugned order dated 30.8.2004 rendered by the learned Judge, City Civil Court No.17, Ahmedabad below application Ex.15, in Summary Suit No.3418 of 1991 is quashed and set aside. The matter is remanded to the City Civil Court, Ahmedabad for deciding the application Ex.15, Summons for Judgement, in Summary Suit No.3418 of 1991 de-novo after giving ample opportunity of

hearing to both the parties, strictly in accordance with law.

7. It is made clear that this Court has not decided the matter on merits. Therefore, the learned Judge, City Civil Court, Ahmedabad before whom the application Ex.15, Summons for Judgement, in Summary Suit No.3418 of 1991 will be placed for hearing shall decide the same on the basis of the evidence adduced and produced before him by both the parties, strictly in accordance with law.

Rule is made absolute accordingly.

(A.M. Kapadia, J.)

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